

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

IN THE MATTER OF:

SONNY M. NINAN,

License Number REL39244

Case Nos. 2013-579 and 2014-6

Respondent

FINAL ORDER

This matter came before the South Carolina Real Estate Commission ("Commission") on November 12, 2014, as a result of the Notice of Hearing and Formal Complaint which was served upon the Respondent and filed with the Commission. Respondent served an Answer to the Formal Complaint dated September 9, 2014. A quorum of Commission members was present. The Hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6) and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). Lauren Kearney, Assistant Disciplinary Counsel, represented the State. The Respondent was present and was represented by James O'Connell, Esq.¹ Respondent's motion for a continuance of both administrative cases because of pending civil and criminal matters was denied.

Respondent was charged with violation of S. C. Code Ann. §§40-57-145(A) (1), (4) and (10) and 40-1-110(1) (f) and (g) (1976 amended).

Witnesses

State's Witnesses: For case number 2013-579 - Chris Atchison (Complainant). For case number 2014-6 - Linda Byce (Complainant).

Respondent's Witnesses: For case number 2013-579 and 2014-6 - Sonny M. Ninan (Respondent). For case number 2014-6 - Robin Saltalamacchio, Joseph Saltalamacchio and Bobby Owens.

Exhibits

State's Exhibit 1: Buy/Sell Agreement dated September 20, 2012 (admitted with Respondent's objection noted on the record).
State's Exhibit 2: Affidavit signed by Chris Atchison dated December 4, 2013 (admitted with Respondent's objection noted on the record).
State's Exhibit 3: Two (2) copies of an Official Check number 508733329 for \$10,000.

¹David Harrison, Attorney for Mr. Owens and Mr. Ninan for a pending criminal action submitted his concern for prejudice that the State referenced a criminal charge, but no conviction in the Formal Complaint.

State's Exhibit 4: Title to Real Estate, Promissory Note, and Mortgage of Real Estate.
(Admitted with Respondent's objection noted on the record)²

Respondent's Exhibit 1: Lanier Law Firm, LLC letter dated June 6, 2014.³

FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, the Commission makes the following findings of fact:

1. Respondent was licensed by the Commission as a Real Estate Broker-in-Charge and the Commission has jurisdiction over the Respondent and the subject matter of this action.

Case No. 2013-579

2. On or about September 20, 2012, Respondent entered into a Buy/Sell Agreement ("Agreement") with Complainant Atchison. The Agreement provided that Respondent would sell a funeral home located at 715 Augusta Street, Greenville, South Carolina ("Subject Property 1") to Complainant Atchison for \$670,000.00. The sale was subject to Respondent's purchase of said property in a foreclosure sale scheduled for October 1, 2012. Pursuant to the Agreement, Complainant Atchison was to tender a \$10,000.00 earnest money deposit but, in the event the foreclosure sale did not occur, the earnest money deposit would be refunded.

3. The foreclosure sale did not occur by October 1, 2012, and Respondent did not refund Complainant Atchison his earnest money deposit.

4. Mr. Atchison testified that he paid the earnest money deposit on September 20, 2012, and he requested the return of his earnest money deposit beginning in October 2012 and Respondent did not return it. He testified that his attorney sent an affidavit and letter dated December 4, 2013, to Respondent and Respondent did not respond.

5. Mr. Atchison testified that Respondent told Mr. Atchison that Respondent owned the property and that Mr. Atchison did not have to pay the additional \$23,500 on or before September 28, 2012. He testified that Respondent told him that the foreclosure process would take longer and they orally agreed for Mr. Atchison to put funds into another piece of property in lieu of paying the \$23,500 on September 28, 2012.

6. Respondent testified that he told Mr. Atchison that his company, Global Business Consultants, was going to buy the Subject Property out of foreclosure and sell it to Mr. Atchison. Respondent's other company, Global Capital Lending, was going to finance the Subject Property for Mr. Atchison. He testified that he was not involved in this deal as a real estate broker and Mr. Atchison's check was not made out to RhinoMax Realty Group. He testified that this was a foreclosure deal not a real estate deal. He testified that Mr. Atchison did default on the \$10,000 earnest money deposit because he did not pay the \$23,500 payment that was due on September 28, 2012. Respondent testified that there was another property purchased by Mr. Atchison from

² Mr. Harrison offered to provide the originals of these documents, but his offer was declined by the Commission Chair.

³ Provided by Mr. Harrison to Mr. Owens.

Respondent in December 2012 and Mr. Atchison never asked for the \$10,000 to be credited to the purchase price of the new property because Mr. Atchison knew he had defaulted on the earnest money deposit in September 2012.

7. Respondent admitted that at the time the buy sell agreement was entered into, neither Global Capital Lending nor Global Business Consultants owned the Subject Property, but he had an agreement with the lien holder to buy the Subject Property when it went into foreclosure. Respondent also admitted that the buy sell agreement did not have a default clause which allowed Global Lending and/or Global Business Consultants to retain the \$10,000 earnest money deposit.

8. Respondent testified that he was President of both Global Business Consultants and Global Capital Lending and the capacity of his involvement was verbally disclosed to Mr. Atchison. He testified that since he was not involved in this transaction as a real estate licensee, he did not disclose it in writing on the buy sell agreement.

Case Number 2014-6

9. Complainant Byce testified that she agreed to sell her home located at 120 West Mountain Creek Church Road, Greenville, South Carolina ("Subject Property") to Mr. Bobby Owens. She testified that Mr. Owens told her she would not need an attorney because he had an attorney on retainer. Mr. Owens brought the Respondent to see the Subject Property and Ms. Byce testified that she assumed Respondent was Mr. Owens' attorney. She testified that Respondent did not confirm or deny that he was an attorney when he came to see the Subject Property with Mr. Owens. She testified that Respondent never represented that he was an attorney or a real estate broker.

10. Ms. Byce testified that the closing was at Respondent's office on Sunday, June 9, 2013. Ms. Byce, her son, Respondent, Mr. and Mrs. Owens and two witnesses were present. She testified that there was no attorney there and she thought Respondent was the attorney.

11. Ms. Byce testified that Respondent facilitated the closing in that he brought documents that included a Title to Real Estate, a Promissory Note, and a Mortgage of Real Estate document with him to the closing, had the parties sign and witness one or more of these documents and then Respondent notarized the documents. She testified that she objected to the terms on the Promissory Note so Respondent removed the Promissory Note and told Ms. Byce that it was the wrong paper. There was no signature provision on the Promissory Note for Ms. Byce to sign. She testified that she assumed throughout the closing that Respondent was Mr. Owens' attorney. She testified that when she forwarded the documents to her attorney, she found out Respondent was not an attorney. She testified that Mr. O'Connell did not attend the closing and she did not hire him to assist with the closing.

12. Respondent testified that he never represented to Ms. Byce that he was an attorney. He testified that at his meeting with Ms. Byce and Mr. Owens at the Subject Property, he introduced himself and gave Ms. Byce his business card. He testified that he told her that he was a real estate broker, but he did not represent either of them for this transaction. He testified that he called attorney, Jim O'Connell, while he was at the Subject Property, in front of Ms. Byce and Mr. Owens, to explain the transaction to the attorney so the attorney could prepare all of the documents. Respondent testified that his only responsibility was getting the signatures and notarizing the signatures. He testified that at the closing, he explained that he was not an attorney and he offered to fax the

documents to Ms. Byce's attorney. He testified that the initial arrangement was to go the attorney's office on Monday, June 10, 2013, but Ms. Byce could not attend on that date. He testified that he did not believe the transaction on June 9, 2013 was a closing, but more of a transfer of a deed with all documents prepared by attorney Jim O'Connell.

13. Respondent testified that he did not remove the Promissory Note at the closing, but at a later date, he referred Ms. Byce to Mr. O'Connell for questions she had.

14. Ms. Saltalamacchia testified that she witnessed Ms. Byce's signature on the Title to Real Estate on June 9, 2013. She testified that Respondent told everyone present that he was not an attorney and that he was present to notarize the documents. She testified that Respondent asked if any of the documents needed to be faxed or emailed and he left while the documents were being reviewed.

15. Mr. Saltalamacchia testified that he saw Ms. Byce sign the document and he saw Respondent sign as notary. He testified that he did not see Ms. Byce's son sign any document and that Ms. Byce was the only one that signed anything.

16. Mr. Burns testified that he contacted Respondent about the Subject Property because he was familiar with the real estate in the area. He testified that Respondent never held himself out as the attorney and was only present at the transaction to notarize the documents. He testified that Respondent also told him how to record the deed. He testified that he did not retain Mr. O'Connell. He testified that Respondent asked Mr. O'Connell to draft the documents. He testified that David Harrison was his attorney, but Ms. Byce could not wait for him.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code §§40-1-115 and 40-57-60 (2), and, upon finding that a Respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, probation or cancellation of a license to practice. Additionally, the Commission may assess a fine and impose a public reprimand. Upon a determination by the Commission that discipline is not appropriate, the Commission may issue a non-disciplinary letter of caution, S.C. Code Ann. §§ 40-57-150 and 40-1-120.

2. For case number 2013-579, the State met its burden of proving that Respondent violated S.C. Code Ann. §40-57-145 (A) (10) (1976, as amended), in that Respondent failed, within a reasonable time, to account for or to remit any monies coming into his possession which belonged to others.

3. For case number 2013-579 and case number 2014-6, the State met its burden of proving that Respondent violated S.C. Code Ann. §40-1-110 (1) (f) (1976, as amended), in that Respondent committed a dishonorable, unethical, or unprofessional act that was likely to deceive, defraud, or harm the public.

4. For case number 2014-6, the State met its burden of proving that Respondent violated S.C. Code Ann. §40-57-145(A) (4) (1976, as amended), in that Respondent demonstrated bad faith, dishonesty, untrustworthiness or incompetency in a manner as to endanger the interest of the public.

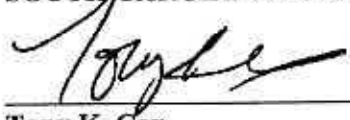
5. The State did not meet its burden of proving a violation of S.C. Code Ann. §§40-57-145 (A) (1) and 40-1-110(1) (g) (1976, as amended),

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Respondent's license number 39244 shall be publicly reprimanded.
2. Respondent's license number 39244 shall be suspended for a period of twelve (12) months with the suspension stayed after six (6) months of active suspension; after which, Respondent's license shall be placed on a probationary status for a period of three (3) years after the twelve (12) month suspension period.
3. Respondent shall pay a penalty of One thousand dollars (\$1000) for four (4) violations for a total penalty of Four thousand dollars (\$4000). This penalty shall be paid during the six (6) months of active suspension.
4. Respondent shall be required to take an ethics continuing education class, a contracts continuing education class, and a trust account continuing education class within the six (6) month period of active suspension.
5. If the terms and conditions of this order are not met by Respondent, Respondent's license may be administratively suspending pending compliance or further order of the Commission.
6. This order is effective upon service on Respondent and/or his Attorney.

AND IT IS SO ORDERED.

SOUTH CAROLINA REAL ESTATE COMMISSION



Tony K. Cox
Chairman

January 13, 2015.